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# HOUSE BILL No. 1247

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-2.5; IC 6-6-1.1; IC 8-14-2.

**Synopsis:** Taxes on motor fuel; mass transit funding. Provides that sales of gasoline are exempt from sales tax. Provides for an increase in the sales tax rate from 6% to 6.4%. Provides for an increase in the gasoline tax rate from \$0.18 per gallon to \$0.25 per gallon. Provides that the additional revenue derived from the increase in the gasoline tax rate is deposited in the local road and street account. Allows a county, city, or town to adopt an ordinance to spend 10% of the increased local road and street account distribution on local or regional mass transit. Repeals provisions requiring distributors of gasoline to prepay sales tax when transferring gasoline to a retailer.

**Effective:** July 1, 2008; August 1, 2008.

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### Austin, Oxley

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January 14, 2008, read first time and referred to Committee on Ways and Means.

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Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## HOUSE BILL No. 1247

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 6-2.5-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) The state gross retail tax is measured by the gross retail income received by a retail merchant in a retail unitary transaction and is imposed at the following rates:

STATE GROSS RETAIL TAX	GROSS RETAIL INCOME FROM THE RETAIL UNITARY TRANSACTION
\$ 0	less than \$ <del>0.09</del> <b>\$0.08</b>
\$ 0.01 at least <del>\$0.09</del> <b>\$0.08</b>	but less than \$ <del>0.25</del> <b>\$0.23</b>
\$ 0.02 at least <del>\$0.25</del> <b>\$0.23</b>	but less than \$ <del>0.42</del> <b>\$0.39</b>
\$ 0.03 at least <del>\$0.42</del> <b>\$0.39</b>	but less than \$ <del>0.59</del> <b>\$0.55</b>
\$ 0.04 at least <del>\$0.59</del> <b>\$0.55</b>	but less than \$ <del>0.75</del> <b>\$0.70</b>
\$ 0.05 at least <del>\$0.75</del> <b>\$0.70</b>	but less than \$ <del>0.92</del> <b>\$0.86</b>
\$ 0.06 at least <del>\$0.92</del> <b>\$0.86</b>	but less than \$ <del>1.09</del> <b>\$1.02</b>

On a retail unitary transaction in which the gross retail income received

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by the retail merchant is one dollar and ~~nine~~ **two** cents (~~\$1.09~~) (**\$1.02**) or more, the state gross retail tax is six **and four-tenths** percent (~~6%~~) (**6.4%**) of that gross retail income.

(b) If the tax, computed under subsection (a), results in a fraction of one-half cent (\$0.005) or more, the amount of the tax shall be rounded to the next additional cent.

SECTION 2. IC 6-2.5-5-43 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 43. Sales of gasoline (as defined in IC 6-6-1.1-103) are exempt from the state gross retail tax.**

SECTION 3. IC 6-2.5-7-1, AS AMENDED BY P.L.1-2007, SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) The definitions in this section apply throughout this chapter.

(b) "Kerosene" has the same meaning as the definition contained in IC 16-44-2-2.

(c) "Gasoline" has the same meaning as the definition contained in IC 6-6-1.1-103.

(d) "Special fuel" has the same meaning as the definition contained in IC 6-6-2.5-22.

(e) "E85" has the meaning set forth in IC 6-6-1.1-103.

(f) "Unit" means the unit of measure, such as a gallon or a liter, by which gasoline or special fuel is sold.

(g) "Metered pump" means a stationary pump which is capable of metering the amount of gasoline or special fuel dispensed from it and which is capable of simultaneously calculating and displaying the price of the gasoline or special fuel dispensed.

(h) "Indiana gasoline tax" means the tax imposed under IC 6-6-1.1.

(i) "Indiana special fuel tax" means the tax imposed under IC 6-6-2.5.

(j) "Federal gasoline tax" means the excise tax imposed under Section 4081 of the Internal Revenue Code.

(k) "Federal special fuel tax" means the excise tax imposed under Section 4041 of the Internal Revenue Code.

(l) "Price per unit before the addition of state and federal taxes" means an amount which equals the remainder of:

(1) the total price per unit; minus

(2) the state gross retail, Indiana gasoline or special fuel, and federal gasoline or special fuel taxes which are part of the total price per unit.

(m) "Total price per unit" means the price per unit at which ~~gasoline~~ **or** special fuel is actually sold, including the state gross retail, Indiana

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gasoline or special fuel, and federal gasoline or special fuel taxes which are part of the sales price.

(n) "Distributor" means a person who is the first purchaser of gasoline from a refiner, a terminal operator, or supplier, regardless of the location of the purchase.

(o) "Prepayment rate" means a rate per gallon of gasoline determined by the department under section 14 of this chapter for use in calculating prepayment amounts of gross retail tax under section 9 of this chapter.

(p) "Purchase or shipment" means a sale or delivery of gasoline, but does not include:

(1) an exchange transaction between refiners, terminal operators, or a refiner and terminal operator; or

(2) a delivery by pipeline, ship, or barge to a refiner or terminal operator.

(q) (n) "Qualified distributor" means a distributor person who:

(1) is a licensed distributor under IC 6-6-1.1; and

(2) holds held an unrevoked permit issued under section 7 of this chapter (before its repeal).

(r) "Refiner" means a person who manufactures or produces gasoline by any process involving substantially more than the blending of gasoline.

(s) "Terminal operator" means a person that:

(1) stores gasoline in tanks and equipment used in receiving and storing gasoline from interstate or intrastate pipelines pending wholesale bulk reshipment; or

(2) stores gasoline at a boat terminal transfer that is a dock or tank, or equipment contiguous to a dock or tank, including equipment used in the unloading of gasoline from a ship or barge and used in transferring the gasoline to a tank pending wholesale bulk reshipment.

SECTION 4. IC 6-2.5-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) With respect to the sale of gasoline which is dispensed from a metered pump, a retail merchant shall collect, for each unit of gasoline sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$0.001), of:

(1) the price per unit before the addition of state and federal taxes; multiplied by

(2) six percent (6%);

The retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under

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~~IC 6-2.5-5.~~

(b) With respect to the sale of special fuel or kerosene which is dispensed from a metered pump, unless the purchaser provides an exemption certificate in accordance with IC 6-2.5-8-8, a retail merchant shall collect, for each unit of special fuel or kerosene sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$0.001), of:

(1) the price per unit before the addition of state and federal taxes; multiplied by

(2) six percent (6%).

Unless the exemption certificate is provided, the retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

SECTION 5. IC 6-2.5-7-5, AS AMENDED BY P.L.182-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) Each retail merchant who dispenses ~~gasoline~~ or special fuel from a metered pump shall, in the manner prescribed in IC 6-2.5-6, report to the department the following information:

(1) The total number of gallons of gasoline sold from a metered pump during the period covered by the report.

(2) The total amount of money received from the sale of gasoline described in subdivision (1) during the period covered by the report.

(3) That portion of the amount described in subdivision (2) which represents state and federal taxes imposed under this article, ~~IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.~~

(4) (1) The total number of gallons of special fuel sold from a metered pump during the period covered by the report.

(5) (2) The total amount of money received from the sale of special fuel during the period covered by the report.

(6) (3) That portion of the amount described in subdivision (5) (2) that represents state and federal taxes imposed under this article, IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.

(7) (4) The total number of gallons of E85 sold from a metered pump during the period covered by the report.

(b) Concurrently with filing the report, the retail merchant shall remit the state gross retail tax in an amount which equals five and sixty-six hundredths percent (5.66%) of the gross receipts, including state gross retail taxes but excluding Indiana and federal gasoline and special fuel taxes, received by the retail merchant from the sale of the ~~gasoline and~~ special fuel that is covered by the report and on which the

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1 retail merchant was required to collect state gross retail tax. The retail  
 2 merchant shall remit that amount regardless of the amount of state  
 3 gross retail tax which ~~he~~ **the retail merchant** has actually collected  
 4 under this chapter. However, the retail merchant is entitled to deduct  
 5 and retain the amounts prescribed in subsection (c), IC 6-2.5-6-10, and  
 6 IC 6-2.5-6-11.

7 (c) A retail merchant is entitled to deduct from the amount of state  
 8 gross retail tax required to be remitted under subsection (b) the amount  
 9 determined under STEP THREE of the following formula:

10 **STEP ONE: For reporting periods ending before July 1, 2008,**  
 11 **determine:**

12 (A) the sum of the prepayment amounts made during the  
 13 period covered by the retail merchant's report; minus

14 (B) the sum of prepayment amounts collected by the retail  
 15 merchant, in the **retail** merchant's capacity as a qualified  
 16 distributor, during the period covered by the retail merchant's  
 17 report.

18 **For reporting periods ending after June 30, 2008, the result of**  
 19 **this STEP is zero (0).**

20 **STEP TWO:** Subject to subsection (d), for reporting periods  
 21 ending before July 1, 2020, determine the product of:

22 (A) eighteen cents (\$0.18); multiplied by

23 (B) the number of gallons of E85 sold at retail by the retail  
 24 merchant during the period covered by the retail merchant's  
 25 report.

26 **For reporting periods ending after June 30, 2020, the result of**  
 27 **this STEP is zero (0).**

28 **STEP THREE:** Add the amounts determined under STEPS ONE  
 29 and TWO.

30 For purposes of this section, a prepayment of the gross retail tax is  
 31 presumed to occur on the date on which it is invoiced.

32 (d) The total amount of deductions allowed under subsection (c)  
 33 STEP TWO may not exceed one million dollars (\$1,000,000) for all  
 34 retail merchants in all reporting periods. A retail merchant is not  
 35 required to apply for an allocation of deductions under subsection (c)  
 36 STEP TWO. If the department determines that the sum of:

37 (1) the deductions that would otherwise be reported under  
 38 subsection (c) STEP TWO for a reporting period; plus

39 (2) the total amount of deductions granted under subsection (c)  
 40 STEP TWO in all preceding reporting periods;

41 will exceed one million dollars (\$1,000,000), the department shall  
 42 publish in the Indiana Register a notice that the deduction program

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under subsection (c) STEP TWO is terminated after the date specified in the notice and that no additional deductions will be granted for retail transactions occurring after the date specified in the notice.

SECTION 6. IC 6-2.5-7-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. (a) If the deduction under section 5(c) of this chapter exceeds the amount of gross retail tax required to be remitted under section 5(b) of this chapter, the retail merchant is entitled to a credit. The credit shall be used as follows:

(1) First, the credit shall be applied against gross retail and use tax liability of the retail merchant that is required to be remitted under IC 6-2.5-6.

(2) Second, any amount remaining shall be applied against the gasoline tax liability of the retail merchant, as determined under IC 6-6-1.1, excluding any liability for gasoline delivered to a taxable marine facility.

A retail merchant may file a claim for a refund instead of taking a credit or for a refund of any excess tax payment remaining after the credits allowed by this section. ~~In addition, a retail merchant may file a claim for a refund under section 12 of this chapter.~~

(b) A retail merchant that is entitled to a refund under this section must file a claim for the refund on the form approved by the department and must include any supporting documentation reasonably required by the department. If a retail merchant files a completed refund claim form that includes all supporting documentation, the excess tax payment that is not refunded within ninety (90) days accrues interest as provided in IC 6-8.1-9-2.

(c) Before the fifth day of each month, the department shall determine and notify the treasurer of state of the amount of credits applied during the preceding month against the gasoline tax under this section. The treasurer of state shall transfer from the general fund:

(1) to the highway, road, and street fund, twenty-five percent (25%) of the amount set forth in the department's notice; and

(2) to the motor fuel tax fund of the motor vehicle highway account, seventy-five percent (75%) of the amount set forth in the department's notice.

SECTION 7. IC 6-6-1.1-201 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 201. A license tax of ~~eighteen twenty-five cents (\$0.18)~~ **(\$0.25)** per gallon is imposed on the use of all gasoline used in Indiana, except as otherwise provided by this chapter. The distributor shall initially pay the tax on the billed gallonage of all gasoline the distributor receives in this state, less any deductions authorized by this chapter. The distributor shall then add

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the per gallon amount of tax to the selling price of each gallon of gasoline sold in this state and collected from the purchaser so that the ultimate consumer bears the burden of the tax.

SECTION 8. IC 6-6-1.1-801.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE AUGUST 1, 2008]: Sec. 801.5. (a) The administrator shall transfer ~~one-ninth (1/9)~~ **two twenty-fifths (2/25)** of the taxes that are collected under this chapter to the state highway road construction and improvement fund.

(b) The administrator shall transfer ~~one-eighteenth (1/18)~~ **one twenty-fifth (1/25)** of the taxes that are collected under this chapter to the state highway fund.

(c) The administrator shall transfer ~~one-eighteenth (1/18)~~ **one twenty-fifth (1/25)** of the taxes that are collected under this chapter to the auditor of state for distribution to counties, cities, and towns. The auditor of state shall distribute the amounts transferred under this subsection to each of the counties, cities, and towns eligible to receive a distribution from the motor vehicle highway account under IC 8-14-1 and in the same proportion among the counties, cities, and towns as funds are distributed from the motor vehicle highway account under IC 8-14-1. Money distributed under this subsection may be used only for purposes that money distributed from the motor vehicle highway account may be expended under IC 8-14-1.

**(d) The administrator shall transfer seven twenty-fifths (7/25) of the taxes that are collected under this chapter to the local road and street account for distribution as provided under IC 8-14-2-4.**

~~(d)~~ (e) After the transfers required by subsections (a) through ~~(c)~~, (d), the administrator shall transfer the next twenty-five million dollars (\$25,000,000) of the taxes that are collected under this chapter and received during a period beginning July 1 of a year and ending June 30 of the immediately succeeding year to the auditor of state for distribution in the following manner:

(1) thirty percent (30%) to each of the counties, cities, and towns eligible to receive a distribution from the local road and street account under IC 8-14-2 and in the same proportion among the counties, cities, and towns as funds are distributed under IC 8-14-2-4;

(2) thirty percent (30%) to each of the counties, cities, and towns eligible to receive a distribution from the motor vehicle highway account under IC 8-14-1 and in the same proportion among the counties, cities, and towns as funds are distributed from the motor vehicle highway account under IC 8-14-1; and

(3) forty percent (40%) to the Indiana department of

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transportation.

~~(e)~~ (f) The auditor of state shall hold all amounts of collections received under subsection ~~(d)~~ (e) from the administrator that are made during a particular month and shall distribute all of those amounts pursuant to subsection ~~(d)~~ (e) on the fifth day of the immediately succeeding month.

~~(f)~~ (g) All amounts distributed under subsection ~~(d)~~ (e) may only be used for purposes that money distributed from the motor vehicle highway account may be expended under IC 8-14-1.

SECTION 9. IC 8-14-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. **(a) Except as provided in subsection (b),** it is hereby declared to be the intent of the general assembly that the monies deposited in the primary highway system special account and the local road and street account shall be used exclusively for engineering, land acquisition, construction, resurfacing, restoration, and rehabilitation of highway facilities.

**(b) Money deposited in the local road and street account may be used for local or regional mass transit as provided in section 9 of this chapter.**

SECTION 10. IC 8-14-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. Money from the local road and street account shall be used exclusively by the cities, towns, and counties for:

- (1) engineering, land acquisition, construction, resurfacing, maintenance, restoration, or rehabilitation of both local and arterial road and street systems;
- (2) the payment of principal and interest on bonds sold primarily to finance road, street, or thoroughfare projects;
- (3) any local costs required to undertake a recreational or reservoir road project under IC 8-23-5; ~~or~~
- (4) the purchase, rental, or repair of highway equipment; **or**
- (5) local or regional mass transit as provided in section 9 of this chapter.**

SECTION 11. IC 8-14-2-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. **(a) Subject to subsection (b), the fiscal body of a county, city, or town may adopt an ordinance to appropriate a part of the county's, city's, or town's distribution under section 4 of this chapter for local or regional mass transit.**

**(b) For any calendar year, the amount that a county, city, or town expends on local or regional mass transit under subsection (a) may not exceed the amount determined in STEP THREE of the**

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following formula:

**STEP ONE:** Determine the amount deposited during the calendar year in the local road and street account under IC 6-6-1.1-801.5(d).

**STEP TWO:** Determine the part of the STEP ONE result distributed to the county, city, or town under section 4 of this chapter.

**STEP THREE:** Multiply:

(A) the STEP TWO result; by

(B) ten percent (10%).

SECTION 12. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2008]: IC 6-2.5-7-7; IC 6-2.5-7-8; IC 6-2.5-7-9; IC 6-2.5-7-10; IC 6-2.5-7-11; IC 6-2.5-7-12; IC 6-2.5-7-13; IC 6-2.5-7-14; IC 6-2.5-7-15.

SECTION 13. [EFFECTIVE JULY 1, 2008] (a) The definitions in IC 6-2.5-7-1, before its amendment by this act, apply throughout this SECTION.

(b) A distributor that:

(1) prepaid the state gross retail tax under this chapter before July 1, 2008;

(2) is a retail merchant; and

(3) sells gasoline that is exempt from the state gross retail tax:

(A) as evidenced by a purchaser's exemption certificate issued by the department of state revenue for a sale occurring before July 1, 2008; or

(B) by operation of law for a sale occurring after June 30, 2008;

may not require the exempt purchaser to pay the gross retail taxes prepaid in the gasoline sold to the exempt purchaser. A distributor that has prepaid state gross retail taxes and has not been reimbursed because the gasoline is sold to an exempt purchaser may file a claim for a refund. A claim for a refund must be on the form approved by the department of state revenue and include all supporting documentation reasonably required by the department of state revenue. If a distributor files a completed refund claim form that includes all supporting documentation, the department of state revenue shall authorize the auditor of state to issue a warrant for the refund.

(c) This SECTION expires July 1, 2009.

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